Office - Supreme Court, U. S.
FILED
MAY 29 1942
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. [redacted] 104

HAMLET ICE COMPANY, INCORPORATED,
Petitioner,

vs.

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. L. EMANUEL,
JAMES H. POU, JR.,
O. L. HENRY,
L. R. VARSER,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition	1
Statement of case	2
Question presented:	
Question 1	3
Reasons for allowance of the writ	3
Authorities cited in petition:	
Bunte Bros. v. *Federal Trade Commission,* 104 F. (2d) 996	3
Chapman v. *Home Ice Co.,* 5 Wage Hour Report 133	4
Conference Report No. 2738, June 11, 1938	4
Federal Trade Commission v. *Bunte Bros.,* 312 U. S. 349	3
Fleming v. *Atlantic Co.,* 40 Fed. Supp. 654, 662	4
Fleming v. *Hitchcock,* 38 Fed. Supp. 358	4
Gordon v. *Paducah Mfg. Co.,* 41 Fed. Supp. 980, 986	4
Jewel Tea Co. v. *Williams,* 118 F. (2d) 202, 206	4
Labor Law Service, paragraphs 4121, 4123	4
Winslow v. *Federal Trade Commission,* 277 Fed. 206	3
Supporting brief	7

Table of Cases Cited.

Bunte Bros., Inc., v. *Federal Trade Commission,* 110 F. (2d) 412	10
California Rice Industry v. *Federal Trade Commission,* 102 F. (2d) 716	10
Carter v. *Carter Coal Co.,* 298 U. S. 238, 299, 317, 80 L. Ed. 1160	10
Chassaniol v. *Greenwood,* 291 U. S. 584	10
Chicago, etc., Co. v. *Harrington,* 241 U. S. 177	11

Page

Chicago, R. I. & P. R. Co. v. *Petroleum Ref. Co.*, 39 F. (2d) 629 11
Eastern Air Transport, Inc., v. *South Carolina Tax Commission*, 285 U. S. 147 11
Ex parte Chetwood, 165 U. S. 443 9
Federal Compress Co. v. *McLean*, 291 U. S. 17, 21, 22 10
Federal Trade Commission v. *Bunte Bros.*, 312 U. S. 349 10
General Oil Co. v. *Crain*, 209 U. S. 211, 229 11
Hooper v. *California*, 155 U. S. 655, 39 L. Ed. 297 10
Hopkins v. *United States*, 171 U. S. 578 11
Jewel Tea Co. v. *Williams*, 118 F. (2d) 202, 206 10
Puget Sound Stevedoring Co. v. *State Tax Commission*, 302 U. S. 90 10
Schecter Bros. v. *U. S.*, 295 U. S. 495 11
Southern Ry. Co. v. *Pitchford*, 253 Fed. 736 11
Superior Oil Co. v. *Miss.*, 280 U. S. 390 11
Title Guaranty & Surety Co. v. *U. S.*, 222 U. S., 401 9
United States v. *Gulf Refining Co.*, 268 U. S. 452 9
U. S. v. *Southerland*, 9 Fed. Sup. 204 11
Williams v. *Feats*, 179 U. S. 270, 278 10
Winslow, et al., v. *Federal Trade Commission*, 277 Fed. 206 10

STATUTES CITED.

Fair Labor Standards Act, 1938, 52 Stat. 1060 ..... 7, 8
Judicial Code, Sec. 240 as amended 7
29 U. S. C. A. 206, 207 and 211(c) 7
28 U. S. C. A. 347 7

TEXT CITED.

15 C. J. 2nd, page 298 10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1268

HAMLET ICE COMPANY, INCORPORATED,
Petitioner,

vs.

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Hamlet Ice Company, a corporation, respectfully submits this petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit in the above entitled case, decided April 13, 1942.

The Circuit Court of Appeals for the Fourth Circuit has affirmed on appeal a judgment of the District Court of the United States for the Eastern District of North Carolina, holding that the petitioner is within the terms of the Fair

Labor Standards Act of 1938, 52 Stat. 1060, paragraphs 6, 7 and 11 (c), and had violated the prohibitions of the Act which require conformity with these standards, paragraphs 15 (a) (1), 15 (a) (2), 15 (a) (5), 29 U. S. C. A., paragraphs 215 (a) (1), 215 (a) (2) and 215 (a) (5).

Statement of the Case.

This is an action instituted by Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, against the petitioner, in the United States District Court for the Eastern District of North Carolina, to enjoin the petitioner, Hamlet Ice Company, from violating the terms of the Fair Labor Standards Act in respect to the wages paid and the records kept by the petitioner.

The petitioner denied that it was within the terms of the Fair Labor Standards Act.

The cause was referred to a Master, who heard the testimony and reported his findings of fact and conclusions of law in favor of the petitioner, but upon exceptions filed, the District Court rendered its judgment in favor of the respondent, holding that the petitioner was within the terms of the Fair Labor Standards Act and had violated its prohibitions in respect to wages and the keeping of records.

Petitioner appealed to the Circuit Court of Appeals for the Fourth Circuit, which affirmed the judgment of the District Court on April 13, 1942. Opinion of the Court was by Soper, Circuit Judge, and Circuit Judge Parker and District Judge Waring agreed.

Question Presented.

1. IS THE PETITIONER ENGAGED IN INTERSTATE COMMERCE, OR THE PRODUCTION OF GOODS FOR INTERSTATE COMMERCE?

Reasons for Allowance of the Writ.

1. The question presented in this case is of national importance, in that it involves the question whether the Fair Labor Standards Act of 1938 includes an ice manufacturing business that ships nothing, but sells and delivers its products, at, or nearby, its own plant, to local individual consumers, at Hamlet, North Carolina, and to the Receivers of the Seaboard Air Line Railway, the Fruit Growers Express Company and the Railway Express Company. The question depends on the sales to the Receivers of the Seaboard Air Line Railway, the Fruit Growers Express Company and the Railway Express Company. These purchasers take defendant's ice and break it into suitable sizes and the Railway uses part of it for office use and in cars for drinking water purposes, and the Fruit Growers Express Company uses the ice to fill bunkers according to its service contract with the Railway. The Railway Express Company uses the ice to refrigerate less than carload lots.

2. The decision of the Circuit Court of Appeals is in conflict with other decisions interpreting the same, or similar, statutory language, and the District Courts are in direct conflict.

Winslow v. *Federal Trade Commission,* 4 Cir., 277 Fed. 206;

Federal Trade Commission v. *Bunte Bros.,* 312 U. S. 349;

Bunte Bros. v. *Federal Trade Commission,* 7 Cir., 104 F. (2d) 996.

Chapman v. *Home Ice Co.*, 5 Wage Hour Report 133, from the Western District of Tennessee, is in direct support of petitioner's contention, while *Gordon* v. *Paducah Ice Mfg. Co.*, 41 Fed. Supp. 980, 986, from the Western District of Kentucky, reaches a contrary conclusion to the Chapman case. The holding that the Ice Company, in the Gordon case, was under the Fair Labor Standards Act does not appear to have been necessary. *Fleming* v. *Atlantic Co.*, 40 Fed. Supp. 654, 662, may be said to be contrary to the Chapman case, but some ice did go into interstate commerce, and *Fleming* v. *Hitchcock*, 38 Fed. Supp. 358, was based on a sale and distribution of car strips, and other materials, used in loading citrus fruits for interstate shipment.

3. The decision of the Circuit Court of Appeals gives to the Fair Labor Standards Act the same effect as if the Act contained the House Amendment, which provided for minimum wages and maximum hours in any industry affecting commerce, although this amendment was eliminated. See Conference Report No. 2738, June 11, 1938, C. C. H. Labor Law Service, paragraphs 4121 and 4123.

The decision also is contrary to *Jewel Tea Company* v. *Williams*, 118 F. (2) 202, 206.

4. The question decided by the Circuit Court of Appeals is most important to the public and to the manufacturers of ice, and similar commodities, as well as employees engaged in this and similar industries which have similar business practices, to the end that they should know the extent, as well as the limitation of the Fair Labor Standards Act as applied to intrastate transactions and where, in such transactions, intrastate commerce ends and interstate commerce under the Fair Labor Standards Act begins.

5. For that the Circuit Court of Appeals denied, in its interpretation of the Fair Labor Standards Act, to peti-

tioner the benefit of the exemption provided in Section 3, of the Fair Labor Standards Act defining "goods" when it says, "but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof, other than a producer, manufacturer or processor." The effect and function of this definition of "goods" is of extreme importance in industry when the application of the Fair Labor Standards Act is in question, and your petitioner contends that all of its purchasers are ultimate consumers and are "other than a producer, manufacturer or processor thereof".

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding said Court to certify and to send to this Court a full and complete transcript of the record and of the proceedings in said Circuit Court of Appeals had in said matter, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by the statutes of the United States and the rules of this Court, and that the judgment herein of the said Circuit Court of Appeals be reversed by this Honorable Court, and for such other and further relief as to the Court may seem proper.

J. L. EMANUEL,
JAMES H. POU, JR.,
Raleigh, North Carolina.
O. L. HENRY,
L. R. VARSER,
Lumberton, North Carolina, Attorneys for Hamlet Ice Company, Inc., Petitioner.